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No. 79-1551

In the Supreme Court of the United States

OCTOBER TERM, 1979

SIX NATIONS CONFEDERACY, PETITIONER

v.

CECIL ANDRUS, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 610 F.2d 996. The opinion of the district court is reported at 447 F. Supp. 40.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 1977, and a petition for rehearing was denied on January 4, 1980 (Pet. App. 7a). The petition for a writ of certiorari was filed on April 3, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a final judgment of the Indian Claims Commission reported to Congress may be collaterally attacked in the United States district court.

STATEMENT

Petitioner brought this suit in the United States District Court for the District of Columbia to challenge a final judgment entered by the Indian Claims Commission in Docket No. 84, *Six Nations* v. *United States*, 32 Ind. Cl. Comm. 440, 460 (1973). The proceedings before the Indian Claims Commission were brought on behalf of the Six Nations by the Seneca Nation, the Seneca-Cayuga Tribe of Oklahoma, the Tuscarora Nation, the Oneida Tribe of Wisconsin and several named individuals of the respective tribes forming the Six Nations.[1] Petitioner, however, alleges that it is the only true and historical representative of the Six Nations, and seeks to void the Indian Claims Commission judgment by claiming that only petitioner could properly represent the Six Nations.[2] Both the district court and the

[1] The Six Nations (sometimes referred to as the Iroquois Confederation) was historically comprised of the Onondaga, Seneca, Mohawk, Oneida, Cayuga and Tuscarora Nations and were located in western New York. *Six Nations* v. *United States*, 173 Ct. Cl. 899, 901-902 (1965); U.S. Dept. of the Interior, *Federal Indian Law* 966-967 (1958). Petitioner's witnesses admitted that the tribal entities in the action before the Indian Claims Commission were descendants of the Six Nations (May 26, 1977 Tr. 30-33, 56).

[2] The decision of the Commission was reported to Congress pursuant to 25 U.S.C. 70t. 120 Cong. Rec. 9630, 10249 (1974). Funds in payment of the judgment were appropriated in the Act of December 27, 1974, Pub. L. No. 93-554, 88 Stat. 1771,

court of appeals found that they were unable to entertain petitioner's action. The district court found that petitioner failed to state a claim upon which relief can be granted. *Six Nations Confederacy* v. *Andrus*, 447 F. Supp. 40, 43 (D.D.C. 1977). In affirming, the court of appeals held that exclusive jurisdiction to determine petitioner's claim was in the Indian Claims Commission or the Court of Claims (Pet. App. 5a). Both courts concluded that they would not set aside a judgment which has "the effect of a final judgment of the Court of Claims." 25 U.S.C. 70u(a).

ARGUMENT

The decision of the court of appeals affirming the district court is correct, lacks general importance, and does not warrant review by this Court.

1. Petitioner's principal contention (Pet. 13-17) is that it may collaterally attack in the district court a judgment which, by statute, 25 U.S.C. 70u(a), has the effect of a final judgment of the Court of Claims. However, Congress specifically and unambiguously granted to the Court of Claims the "exclusive jurisdiction to affirm, modify, or set aside" a final decision of the Indian Claims Commission, 25 U.S.C. 70s(b), with review in this Court by petition for a writ of certiorari. 25 U.S.C. 70s(c). Congress may

1782, and immediately thereafter placed in an account to the credit of the petitioners before the Indian Claims Commission. *Six Nations Confederacy* v. *Andrus*, 447 F. Supp. 40, 42 (D.D.C. 1977), aff'd, 610 F.2d 996, 997 (D.C. Cir. 1979). Pursuant to the Act of October 19, 1973, Pub. L. No. 93-134, 87 Stat. 466, 25 U.S.C. 1401 *et seq.*, a plan for the distribution of this judgment became effective on March 4, 1977. *Ibid.*

properly prescribe the courts in which such judicial review may be had and when Congress has so chosen, the avenue of review is exclusive and collateral attack is barred. *City of Tacoma* v. *Taxpayers*, 357 U.S. 320, 336-337 (1958); *Carey* v. *O'Donnell*, 506 F.2d 107, 110 (D.C. Cir. 1974), cert. denied, 419 U.S. 1110 (1975).

While petitioner alleges that it did not know of the Indian Claims Commission proceeding in time to raise its objections before the Commission or the Court of Claims, the Court of Claims, as the court of appeals noted (Pet. App. 5a-6a & n.4), has indicated that its Rule 152(b), the analogue to Rule 60(b) of the Federal Rules of Civil Procedure, might be used to obtain the relief sought by petitioner. See *Andrade* v. *United States*, 485 F.2d 660, 663-664 (Ct. Cl. 1973), cert. denied, 419 U.S. 831 (1974). Because petitioner has not yet sought such relief, petitioner's claim (Pet. 18-19) that the remedy is inadequate is premature.[3]

2. Petitioner's constitutional attack on the judgment is, in any event, without merit. The Indian Claims Commission Act required all claims to be filed

[3] The heart of petitioner's contention (Pet. 5) is the allegation that the parties who claimed to represent the Six Nations before the Indian Claims Commission were not authorized to represent the Six Nations. This presents an issue of alleged fraud upon the court. *Toscano* v. *Commissioner*, 441 F.2d 930, 936 (9th Cir. 1971). See *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U.S. 238, 245-246 (1944). This is relief which the Court of Claims has indicated it might grant under its Rule 152(b). *Andrade* v. *United States, supra.*

before August 13, 1951. 25 U.S.C. 70k. Petitioner failed to file any claim on behalf of the Six Nations. Had the tribal representatives who did file suit failed to do so, the Six Nations would have lost their claim under the Act altogether. To be sure, the Confederacy asserts that it would have preferred to forego a monetary claim in favor of a proceeding to establish its continuing title to the lands involved (Pet. 8). But, in the absence of fraud, the Commission cannot be faulted for accepting the choice indicated by apparently authorized representatives to pursue the Indian Claims Commission Act remedy.

There is no suggestion that the Commission violated the Act in treating the plaintiffs before it as proper applicants. The representational scheme of 25 U.S.C. 70i is clearly within Congress's power to place limitations on waivers of sovereign immunity, *Ex parte Bakelite Corp.*, 279 U.S. 438, 452 (1929); *McElrath* v. *United States*, 102 U.S. 426, 440 (1880), and rationally tied to the government's obligations to Indian tribes in that the whole purpose of the Indian Claims Commission Act was to put to rest the long-standing, historical grievances of Indian tribes. See *Delaware Tribal Business Committee* v. *Weeks*, 430 U.S. 73, 85 (1977).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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